

IRMA MENDEZ,)	Case No. 2:15-cv-00314-RCJ-NJK
)	
Plaintiff,)	ORDER
)	
vs.)	
)	(Docket No. 114)
FIESTA DEL NORTE HOME OWNERS)	
ASSOCIATION, et al.,)	
)	
Defendants.)	
)	

Liberalizing Plaintiff's filing, as the Court must under *Hebbe v. Pliler*, 627 F.3d 338 (9th Cir. 2010), the Court finds that Plaintiff's motion to reconsider contains two separate and distinct requests. First, it seeks reconsideration of the Court's denial of Plaintiff's fourth motion to extend the discovery deadline. For the reasons that follow, that request is **DENIED**. Second, it seeks relief not previously before the Court: Plaintiff requests a one-day extension of the discovery deadline to encompass a deposition that occurred after the filing of Plaintiff's fourth motion to extend and the Court's leave to conduct Defendant Amir Hujjuttallah's deposition. For the reasons discussed below, that request is **GRANTED**.

On February 23, 2015, Plaintiff filed her Complaint. Docket No. 1. Defendant Fiesta Del Norte Home Owners Association filed an answer on March 4, 2015, while Defendants Complete Management Company, LLC, Absolute Business Solutions, Inc., and Amir Hujjuttallah first appeared by filing motions to dismiss on March 16 and 20, 2015. Docket Nos. 11, 14.

1 On April 17, 2015, the Court entered the scheduling order, setting the discovery cut-off for
2 September 11, 2015. Docket No. 31 at 2. On September 11, 2015, the Court granted Plaintiff's
3 motion to extend discovery deadline and extended the discovery deadline to November 10, 2015.
4 Docket No. 64. On November 23, 2015, the Court granted Plaintiff's second motion to extend
5 various discovery deadlines and extended the discovery deadline to January 11, 2016. Docket No.
6 78. On January 5, 2016, the Court granted Plaintiff a third extension of the discovery deadline and
7 extended the discovery deadline to March 3, 2016. Docket No. 91 (granting motion in part and
8 denying in part).

9 On February 17, 2016, Plaintiff filed a fourth motion to extend various discovery deadlines,
10 in which she asked the Court to extend some deadlines that had already expired by six months. *See*
11 Docket Nos. 104, 105. She argued that the presumptively reasonable discovery period of 180 days
12 was inappropriate for her case and that a 12-month discovery period "would have been far more
13 proper[.]" Docket No. 104 at 2. Plaintiff submitted that Defendants had been less than cooperative
14 during the discovery process, a basis on which she had previously relied in receiving three prior
15 extensions from the Court. *Id.* at 3. Plaintiff made no attempt to establish excusable neglect for her
16 failure to timely request extensions of the long-expired discovery deadlines. *See, e.g.,* Docket No.
17 104.

18 On March 4, 2016, Plaintiff conducted the deposition of Michele Naomi, whom Plaintiff
19 perceives to be a key witness. Docket No. 114 at 4; *see also* Docket No. 91 at 2 (setting March 3,
20 2016, discovery deadline). Plaintiff had noticed Defendant Amir Hujjutallah's deposition for that
21 same day, but he failed to appear. Docket No. 114 at 7; *see also* Docket No. 114-1 at 6.

22 On March 10, 2016, the Court denied Plaintiff's fourth motion to extend discovery deadlines.
23 Docket No. 113. The Court found that Plaintiff had failed to show good cause to extend the
24 discovery deadlines based on her contention that 180 days, the presumptively reasonable period, was
25 inadequate for her case. *Id.* at 4. The Court acknowledged that it had extended the discovery period
26 by 60 days on three separate occasions and, therefore, Plaintiff's contention that the discovery period
27 had lasted 180 days was inaccurate. *Id.* As a result of the extensions, the instant case, in reality, has
28

1 enjoyed a discovery period of 360 days, double the presumptively reasonable discovery period. *Id.*
 2 (citing Local Rule 26-1(e)(1)). The Court also found that Plaintiff had failed to address, much less
 3 establish, excusable neglect to extend the deadlines that had expired. *Id.* Therefore, the Court
 4 denied Plaintiff's motion.

5 On March 20, 2016, Plaintiff filed a motion, asking the Court to reconsider its order denying
 6 her discovery request. Docket No. 114.

7 **II. MOTION TO RECONSIDER**

8 Reconsideration is appropriate if the court: (1) is presented with newly discovered evidence;
 9 (2) committed clear error, or the initial decision was manifestly unjust; or (3) if there is an
 10 intervening change in controlling law. *Dixon v. Wallowa County*, 336 F.3d 1013, 1022 (9th Cir.
 11 2003). Reconsideration is "an extraordinary remedy, to be used sparingly and in the interests of
 12 finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d
 13 877, 890 (9th Cir. 2000) (internal quotation marks omitted). A motion for reconsideration is
 14 properly denied where it presents no new arguments. *See Backlund v. Barnhart*, 778 F.2d 1386,
 15 1388 (9th Cir. 1985). By the same token, however, it "may not be used to raise arguments or present
 16 evidence for the first time when they could reasonably have been raised earlier in the litigation."
 17 *Kona Enterprises, Inc.*, 229 F.3d at 890.

18 Even liberally construed, Plaintiff's motion to reconsider largely either rehashes the same
 19 arguments raised in her initial motion or attempts to raise arguments that should have been raised
 20 in her initial motion. To begin, Plaintiff argues that, in light of various Defendants' dilatory
 21 conduct, good cause exists to extend the discovery deadline. Essentially, this is the same argument
 22 that she raised in her first, second, third, and fourth motions to extend. Docket No. 114 at 3-9; *see*,
 23 *e.g.*, Docket No. 104 at 2 (fourth motion to extend); Docket No. 61 at 2 (first motion to extend).
 24 Beyond being procedurally improper, this argument is unpersuasive. Faced with this alleged
 25 conduct, Plaintiff does not explain why she failed to pursue other remedies, such as filing a motion
 26 to compel, instead of merely continuing to file motions to extend the discovery deadline. Further,
 27 Plaintiff still does not attempt to make the requisite showing of excusable neglect for the deadlines

1 that had expired. To the contrary, Plaintiff argues that she did not engage in any sort of neglect.
2 Docket No. 114 at 2, 5.

3 Plaintiff also argues that her extension should have been granted as unopposed under Local
4 Rule 7-2(d). *See* Docket No. 114 at 9-10. “While Local Rule 7-2(d), would [have been] an
5 appropriate basis to grant [Plaintiff’s] motion,” it is within the Court’s discretion to “look at the
6 merits.” *Slater v. Astrue*, 2013 WL 3297199 at *1 (D. Nev. June 28, 2013) (denying motion for
7 sanctions despite lack of opposition). Therefore, the Court did not err in exercising its discretion
8 to reach the merits of Plaintiff’s motion, despite Defendants’ lack of opposition.

9 Accordingly, Plaintiffs request for reconsideration is **DENIED**.

10 **III. MOTION TO EXTEND**

11 Plaintiff represents that, after she filed her fourth motion to extend, she conducted the
12 deposition of Ms. Naomi one day after the discovery cut-off. Docket No. 114 at 4. She requests an
13 extension of the discovery deadline to “perfect the discovery that was obtained from [that]
14 deposition.” *Id.* Additionally, Plaintiff requests the opportunity to depose Defendant Hujjutallah
15 in light of his failure to appear at his deposition, which she had noticed for the same day. *Id.* at 6-8.
16 Because these events occurred after the filing of Plaintiff’s fourth motion to extend, they were not
17 previously before the Court. Accordingly, the normal motion to extend standards apply to these
18 requests.

19 To prevail on a request to amend a scheduling order under Rule 16(b), a movant must
20 establish “good cause” for doing so. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608-
21 09 (9th Cir. 1992); *see also* Local Rule 26-4. The good cause inquiry focuses primarily on the
22 movant’s diligence. *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294-95 (9th Cir. 2000).
23 Good cause to extend the discovery cutoff exists “if it cannot reasonably be met despite the diligence
24 of the party seeking the extension.” *Johnson*, 975 F.2d at 609. Plaintiff diligently attempted to
25 obtain Ms. Naomi’s deposition. Docket No. 114 at 4, 6. Plaintiff represents that she made numerous
26 attempts to coordinate with her opposing counsel to depose Ms. Naomi. Docket No. 114 at 4. When
27 these efforts failed, Plaintiff subpoenaed Ms. Naomi well before the close of the discovery period,

1 on February 10, 2016. Docket No. 106 at 1. Ms. Naomi, however, was only available on March 4,
2 2016. Docket No. 114 at 4. Thus, good cause exists to extend the discovery deadline by one day.

3 Additionally, “all motions or stipulations to extend a deadline set forth in the discovery plan
4 shall be received by the Court no later than twenty-one (21) days before the expiration of the subject
5 deadline.” Local Rule 26-4. Late motions or stipulations “shall not be granted unless the movant
6 demonstrates that the failure to act was the result of excusable neglect.” *Id.* Excusable neglect
7 ‘encompass[es] situations in which the failure to comply with a filing deadline is attributable to
8 negligence,’ . . . and includes ‘omissions caused by carelessness.’” *Lemoge v. United States*, 587 F.3d
9 1188, 1192 (9th Cir. 2009) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380,
10 394 (1993) (internal citations omitted). “The determination of whether neglect is excusable is an
11 equitable one that depends on at least four factors: (1) the danger of prejudice to the opposing party;
12 (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay;
13 and (4) whether the movant acted in good faith.” *Bateman v. U.S. Postal Service*, 231 F.3d 1220,
14 1223–24 (9th Cir. 2000) (citing *Pioneer Investment Services Co. v. Brunswick Assoc. Ltd.*
15 *Partnership*, 507 U.S. 380, 395 (1993)). The determination of whether neglect is excusable is
16 ultimately an equitable one, taking account of all relevant circumstances surrounding the party’s
17 omission. *Pioneer*, 507 U.S. at 395. This equitable determination is left to the discretion of the
18 district court. *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir. 2004).

19 Taking account of all relevant circumstances surrounding Plaintiff’s omission, the Court
20 finds that Plaintiff made an adequate showing of excusable neglect to warrant extending the
21 discovery deadline by one day. There is no evidence that Plaintiff acted in bad faith; a one-day
22 extension will have minimal impact on the proceedings; and the opposing parties have failed to show
23 they would be prejudiced by such an extension. Accordingly, Plaintiff’s request to extend the
24 discovery deadline one day to encompass her deposition of Ms. Naomi is **GRANTED**.

25 Regarding the deposition of Defendant Hujjutallah, the Court finds that Plaintiff has shown
26 both good cause and excusable neglect to obtain the Court’s leave to conduct his deposition outside
27 of the discovery deadline. *Wilson v. Republic Servs. of S. Nevada*, 2012 WL 528226 at *3 (D. Nev.

Feb. 17, 2012). Like the *Wilson* deponent, Defendant Hujjuttallah has failed to appear at multiple depositions. Docket No. 114 at 6-7 (providing that Defendant Hujjuttallah unilaterally cancelled depositions set for October 23, 2015, and March 4, 2016). As a result, Plaintiff has been unable to conduct this deposition, despite her diligent attempts to do so. Plaintiff's delay in filing her motion to reconsider, which the Court construes in part as a motion to extend, is therefore excusable. *Wilson*, 2012 WL 528226 at *2 (finding movant's neglect to be excusable because *pro se* deponent unilaterally cancelled multiple depositions).

As in *Wilson*, the Court finds that an extension of discovery is not necessary and will grant Plaintiff leave to conduct Defendant Hujjuttallah's deposition after the close of discovery. *Id.* at *3. Defendant Hujjuttallah is ordered to appear at a deposition to be noticed by Plaintiff, no later than June 1, 2016. Defendant Hujjuttallah is put on notice that he is not excused from complying with the Federal Rules of Civil Procedure. *See Jacobsen v. Filler*, 790 F.2d 1362, 1364-65 (9th Cir.1986) (holding that *pro se* parties are not excused from following the rules and orders of the court). Failure to appear at this deposition may result in sanctions pursuant to Rule 37(d), Rule 37(b), and/or Local Rule IA 4-1.

III. CONCLUSION

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration (Docket No. 114) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's request to extend the discovery one day to encompass the March 4, 2016, deposition of Michele Naomi is hereby **GRANTED**.

IT IS FURTHER ORDERED that Defendant Hujjuttallah shall appear at a deposition to be noticed by Plaintiff, no later than June 1, 2016. Failure to appear on the date and time noticed may result in sanctions pursuant to Rule 37(d), Rule 37(b), and/or Local Rule IA 4-1.

IT IS SO ORDERED.

DATED: April 26, 2016


NANCY J. KOPPE
United States Magistrate Judge